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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,623	02/22/2002	Yoichiro Tanaka	219861USOPCT	7766

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

SHEIKH, HUMERA N

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 08/22/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,623

Applicant(s)

TANAKA ET AL.

Examiner

Humera N. Sheikh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Application

Receipt of the Change of Address/Power of Attorney filed 01/03/03, the Information Disclosure Statement (IDS) and the Request for Priority under 35 U.S.C. 119, both filed 02/22/02 is acknowledged.

Claims 1-3 and 5-9 are pending. Claims 1-3 and 5-9 are rejected.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 1-3 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi *et al.* (US Pat. No. 6,187,842).

Kobayashi *et al.* teach a gelling agent composition comprising an aqueous media which includes water, aqueous solutions, aqueous emulsions and aqueous dispersions wherein aqueous phase ingredients, such as surfactants or dispersants in the form of powder and fine crystals, pigments, stabilizers, inorganic/organic salts and antiseptics are gelled with suitable water-soluble gelling agents, such as agar, gelatin or carageenan (see reference column 5, line 62 thru col. 7, line 6); (col. 10, lines 25-33); (col. 12, line 16 thru col. 13, line 2).

According to Kobayashi, the gel, which is useful for a cosmetic purpose, can be prepared by gelling an aqueous medium containing a surfactant, a humectant, a ultraviolet absorber or like components for cosmetic compositions. Cosmetic gels can be used as a hair styling agent, make-up remover, facial cleaning composition, facial pack auxiliary, nail polish and remover, lipstick, deodorant (including a stick-shaped product), etc. (col. 6, lines 58-64).

Dispersants to be used can be in various forms such as crystals, powders, paste and solutions, and can be in any form insofar as the dispersant can be easily mixed with or dispersed in a medium (i.e., aqueous medium) in a gelling agent composition (col. 10, lines 25-30).

The gelling agent composition can be prepared by dissolving a sugar compound and a dispersant in a medium such as water. The medium may be removed from the gel by freezing the gel and eliminating (lyophilizing) the medium from the frozen product

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under a pressure reduced below the vapor pressure of the frozen medium. The gel can be frozen at a temperature of about -78°C for example (col. 11, lines 35-62).

There is no significant distinction observed between the instant invention and the prior art since Kobayashi teaches a gelling agent composition whereby aqueous phase ingredients, such as surfactants, antiseptics, and the like are gelled with gelling agents, such as agar, gelatin, or carageenan. The prior art teaches a similarly formulated composition comprising similar ingredients for a related intended purpose as the applicants.

Regarding the particle diameter, there is no criticality seen in the instantly claimed diameter range since the prior art teaches a similar formulation comprising the use of powders for use in cosmetics and abroad. Furthermore, one of ordinary skill in the art would be capable of determining suitable ranges through routine or manipulative experimentation to obtain the best possible results, since these are considered variable parameters. Hence, the instant invention is rendered obvious and unpatentable over the art of Kobayashi.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Humera N. Sheikh whose telephone number is (703) 308-4429. The examiner can normally be reached on Monday through Friday from 7:00A.M. to 4:30P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

hns

August 14, 2003


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600